

Introduced by Senator Hollingsworth

February 17, 2005

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as introduced, Hollingsworth. Housing: density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

This bill would include within those eligibility requirements the construction of a mobilehome park that limits residency based on age requirements for housing for older persons and the construction, for persons and families of moderate income, of a community apartment project and a stock cooperative.

The bill would require a city, county, and city and county to permit an additional incentive or concession, as specified, for projects in which the developer is entitled to a density bonus, but can use less than 50% of the density bonus.

Existing law prohibits a city, county, and city and county from applying a development standard that has the effect of precluding the construction of a development meeting the affordable housing criteria that entitles the developer to a density bonus and incentives or concessions. Existing law authorizes a developer to apply for a waiver

or reduction of development standards and requires the developer to show that the waiver or modification is necessary to make the housing units economically feasible.

This bill would delete the requirement that the developer show that the waiver or modification is necessary to make the housing units economically feasible.

The local administrative requirements imposed by the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:

3 65915. (a) When an applicant seeks a density bonus for a
4 housing development within, or for the donation of land for
5 housing within, the jurisdiction of a city, county, or city and
6 county, that local government shall provide the applicant
7 incentives or concessions for the production of housing units and
8 child care facilities as prescribed in this section. All cities,
9 counties, or cities and counties shall adopt an ordinance that
10 specifies how compliance with this section will be implemented.

11 (b) A city, county, or city and county shall grant a density
12 bonus and incentives or concessions described in subdivision (d)
13 when the applicant for the housing development seeks and agrees
14 to construct at least any one of the following:

15 (1) Ten percent of the total units of a housing development for
16 lower income households, as defined in Section 50079.5 of the
17 Health and Safety Code.

18 (2) Five percent of the total units of a housing development for
19 very low income households, as defined in Section 50105 of the
20 Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, *or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.*

(4) Ten percent of the total dwelling units in a ~~econdominium project as defined in subdivision (f) of, or in a planned common interest development as defined in subdivision (k) of, Section 1351 of the Civil Code;~~ for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. ~~Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. Rents for the lower income density bonus units shall comply with Section 50053 of the Health and Safety Code. The cost of owner-occupied housing shall comply with Section 50052.5 of the Health and Safety Code.~~

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the ~~econdominium project as defined in subdivision (f) of, or in the planned unit common interest development, as defined in subdivision (k) of, Section 1351 of the Civil Code,~~ are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, *and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code.* Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its

1 proportionate share of appreciation, which shall then be used
2 within three years for any of the purposes described in
3 subdivision (e) of Section 33334.2 of the Health and Safety Code
4 that promote homeownership. For purposes of this subdivision,
5 the local government's proportionate share of appreciation shall
6 be equal to the percentage by which the initial sale price to the
7 moderate-income household was less than the fair market value
8 of the home at the time of initial sale.

9 (d) (1) An applicant may submit to a city, county, or city and
10 county a proposal for the specific incentives or concessions that
11 the applicant requests pursuant to this section, and may request a
12 meeting with the city, county, or city and county. The city,
13 county, or city and county shall grant the concession or incentive
14 requested by the applicant unless the city, county, or city and
15 county makes a written finding, based upon substantial evidence,
16 of either of the following:

17 (A) The concession or incentive is not required in order to
18 provide for affordable housing costs, as defined in Section
19 50052.5 of the Health and Safety Code, or for rents for the
20 targeted units to be set as specified in subdivision (c).

21 (B) The concession or incentive would have a specific adverse
22 impact, as defined in paragraph (2) of subdivision (d) of Section
23 65589.5, upon public health and safety or the physical
24 environment or on any real property that is listed in the
25 California Register of Historical Resources and for which there is
26 no feasible method to satisfactorily mitigate or avoid the specific
27 adverse impact without rendering the development unaffordable
28 to low- and moderate-income households.

29 (2) The applicant shall receive the following number of
30 incentives or concessions:

31 (A) One incentive or concession for projects that include at
32 least 10 percent of the total units for lower income households, at
33 least 5 percent for very low income households, or at least 10
34 percent for persons and families of moderate income in a
35 ~~condominium or planned~~ *common interest* development.

36 (B) Two incentives or concessions for projects that include at
37 least 20 percent of the total units for lower income households, at
38 least 10 percent for very low income households, or at least 20
39 percent for persons and families of moderate income in a
40 ~~condominium or planned~~ *common interest* development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a ~~condominium or planned~~ common interest development.

(D) *For projects in which the applicant is entitled to a density bonus, but can utilize less than 50 percent of the density bonus, one additional incentive or concession shall be permitted in addition to those specified in subparagraphs (A), (B), and (C).*

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction

1 of development standards and may request a meeting with the
 2 city, county, or city and county. If a court finds that the refusal to
 3 grant a waiver or reduction of development standards is in
 4 violation of this section, the court shall award the plaintiff
 5 reasonable attorney's fees and costs of suit. Nothing in this
 6 subdivision shall be interpreted to require a local government to
 7 waive or reduce development standards if the waiver or reduction
 8 would have a specific, adverse impact, as defined in paragraph
 9 (2) of subdivision (d) of Section 65589.5, upon health, safety, or
 10 the physical environment, and for which there is no feasible
 11 method to satisfactorily mitigate or avoid the specific adverse
 12 impact. Nothing in this subdivision shall be interpreted to require
 13 a local government to waive or reduce development standards
 14 that would have an adverse impact on any real property that is
 15 listed in the California Register of Historical Resources.

16 ~~(f) The applicant shall show that the waiver or modification is~~
 17 ~~necessary to make the housing units economically feasible.~~

18 ~~(g)~~
 19 (f) (1) For the purposes of this chapter, except as provided in
 20 paragraph (2), "density bonus" means a density increase of at
 21 least 20 percent, unless a lesser percentage is elected by the
 22 applicant, over the otherwise maximum allowable residential
 23 density under the applicable zoning ordinance and land use
 24 element of the general plan as of the date of application by the
 25 applicant to the city, county, or city and county. The amount of
 26 density bonus to which the applicant is entitled shall vary
 27 according to the amount by which the percentage of affordable
 28 housing units exceeds the percentage established in subdivision
 29 (b). ~~For each 1 percent increase above 10 percent in the~~
 30 ~~percentage of units affordable to lower income households, the~~
 31 ~~density bonus shall be increased by 1.5 percent up to a maximum~~
 32 ~~of 35 percent. For each 1 percent increase above 5 percent in the~~
 33 ~~percentage of units affordable to very low income households,~~
 34 ~~the density bonus shall be increased by 2.5 percent up to a~~
 35 ~~maximum of 35 percent. All, as follows:~~

<i>Percentage Low-Income Units</i>	<i>Percentage Density Bonus</i>
10	20
11	21.5
12	23

1	<i>Percentage Low-Income Units</i>	<i>Percentage Density Bonus</i>
2	13	24.5
3	14	26
4	15	27.5
5	17	30.5
6	18	32
7	19	33.5
8	20	35
9		
10	<i>Percentage Very Low Income Units</i>	<i>Percentage Density Bonus</i>
11	5	20
12	6	22.5
13	7	25
14	8	27.5
15	9	30
16	10	32.5
17	11	35
18		
19	<i>Percentage Moderate-Income Units</i>	<i>Percentage Density Bonus</i>
20	10	5
21	11	6
22	12	7
23	13	8
24	14	9
25	15	10
26	16	11
27	17	12
28	18	13
29	19	14
30	20	15
31	21	16
32	22	17
33	23	18
34	24	19
35	25	20
36	26	21
37	27	22
38	28	23
39	29	24
40	30	25

	<i>Percentage Moderate-Income Units</i>	<i>Percentage Density Bonus</i>
1		
2	31	26
3	32	27
4	33	28
5	34	29
6	35	30
7	36	31
8	37	32
9	38	33
10	39	34
11	40	35

12
 13 (2) All density calculations resulting in fractional units shall be
 14 rounded up to the next whole number. The granting of a density
 15 bonus shall not be interpreted, in and of itself, to require a
 16 general plan amendment, local coastal plan amendment, zoning
 17 change, or other discretionary approval. The density bonus shall
 18 not be included when determining the number of housing units
 19 that is equal to 5 or 10 percent of the total. The density bonus
 20 shall apply to housing developments consisting of five or more
 21 dwelling units.

22 ~~(2)~~
 23 (3) For the purposes of this chapter, if a development does not
 24 meet the requirements of paragraph (1), (2), or (3) of subdivision
 25 (b), but the applicant agrees or proposes to construct a
 26 ~~condominium project as defined in subdivision (f) of, or a~~
 27 ~~planned common interest development, as defined in subdivision~~
 28 ~~(k) of, Section 1351 of the Civil Code, in which at least 10~~
 29 percent of the total dwelling units are reserved for persons and
 30 families of moderate income, as defined in Section 50093 of the
 31 Health and Safety Code, a “density bonus” of at least 5 percent
 32 shall be granted, unless a lesser percentage is elected by the
 33 applicant, over the otherwise maximum allowable residential
 34 density under the applicable zoning ordinance and land use
 35 element of the general plan as of the date of application by the
 36 applicant to the city, county, or city and county. For each 1
 37 percent increase above 10 percent of the percentage of units
 38 affordable to moderate-income households, the density bonus
 39 shall be increased by 1 percent up to a maximum of 35 percent.
 40 All density calculations resulting in fractional units shall be

rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

~~(h)~~

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. ~~For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This, as follows:~~

<i>Percentage Very Low Income</i>	<i>Percentage Density Bonus</i>
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

	<i>Percentage Very Low Income</i>	<i>Percentage Density Bonus</i>
1		
2	28	33
3	29	34
4	30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

~~(1)~~
(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

~~(2)~~
(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

~~(3)~~
(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject

1 the proposed development to subsequent design review to the
2 extent authorized by subdivision (i) of Section 65583.2 if the
3 design is not reviewed by the local government prior to the time
4 of transfer.

5 ~~(4)–~~

6 (D) The transferred land and the affordable units shall be
7 subject to a deed restriction ensuring continued affordability of
8 the units consistent with paragraphs (1) and (2) of subdivision
9 (c), which shall be recorded on the property at the time of
10 dedication.

11 ~~(5)–~~

12 (E) The land is transferred to the local agency or to a housing
13 developer approved by the local agency. The local agency may
14 require the applicant to identify and transfer the land to the
15 developer.

16 ~~(6)–~~

17 (F) The transferred land shall be within the boundary of the
18 proposed development or, if the local agency agrees, within
19 one-quarter mile of the boundary of the proposed development.

20 ~~(i)–~~

21 (h) (1) When an applicant proposes to construct a housing
22 development that conforms to the requirements of subdivision (b)
23 and includes a child care facility that will be located on the
24 premises of, as part of, or adjacent to, the project, the city,
25 county, or city and county shall grant either of the following:

26 (A) An additional density bonus that is an amount of square
27 feet of residential space that is equal to or greater than the
28 amount of square feet in the child care facility.

29 (B) An additional concession or incentive that contributes
30 significantly to the economic feasibility of the construction of the
31 child care facility.

32 (2) The city, county, or city and county shall require, as a
33 condition of approving the housing development, that the
34 following occur:

35 (A) The child care facility shall remain in operation for a
36 period of time that is as long as or longer than the period of time
37 during which the density bonus units are required to remain
38 affordable pursuant to subdivision (c).

39 (B) Of the children who attend the child care facility, the
40 children of very low income households, lower income

1 households, or families of moderate income shall equal a
2 percentage that is equal to or greater than the percentage of
3 dwelling units that are required for very low income households,
4 lower income households, or families of moderate income
5 pursuant to subdivision (b).

6 (3) Notwithstanding any requirement of this subdivision, a
7 city, county, or a city and county shall not be required to provide
8 a density bonus or concession for a child care facility if it finds,
9 based upon substantial evidence, that the community has
10 adequate child care facilities.

11 (4) “Child care facility,” as used in this section, means a child
12 day care facility other than a family day care home, including,
13 but not limited to, infant centers, preschools, extended day care
14 facilities, and schoolage child care centers.

15 ~~(j)~~

16 (i) “Housing development,” as used in this section, means one
17 or more groups of projects for residential units constructed in the
18 planned development of a city, county, or city and county. For
19 the purposes of this section, “housing development” also includes
20 a subdivision or ~~a planned unit development or condominium~~
21 ~~project~~ *common interest development*, as defined in Section 1351
22 of the Civil Code, approved by a city, county, or city and county
23 and consists of residential units or unimproved residential lots
24 and either a project to substantially rehabilitate and convert an
25 existing commercial building to residential use or the substantial
26 rehabilitation of an existing multifamily dwelling, as defined in
27 subdivision (d) of Section 65863.4, where the result of the
28 rehabilitation would be a net increase in available residential
29 units. For the purpose of calculating a density bonus, the
30 residential units do not have to be based upon individual
31 subdivision maps or parcels. The density bonus shall be
32 permitted in geographic areas of the housing development other
33 than the areas where the units for the lower income households
34 are located.

35 ~~(k)~~

36 (j) The granting of a concession or incentive shall not be
37 interpreted, in and of itself, to require a general plan amendment,
38 local coastal plan amendment, zoning change, or other
39 discretionary approval. This provision is declaratory of existing
40 law.

~~(j)~~

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

~~(m)~~

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code

~~(n)~~

(m) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

~~(e)~~

(n) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

~~(p)~~

(o) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide “onsite parking” through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O